



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/173052

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed March 23, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on May 03, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly denied [REDACTED] request for authorization to provide personal care services to the Petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

||

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. On June 11, 2015, Milwaukee County Disability Services Division completed a Long Term Care Functional Screen (LTCFS). At that time, the Petitioner had diagnoses of asthma, degenerative joint disease of spine, morbid obesity, fibromyalgia, congestive heart failure, and obstructive sleep apnea. (Exhibit 2, attachment 3)
3. The June 2015 LTCFS determined the Petitioner to be independent with the tasks of bathing, dressing, eating, mobility, toileting, transfers and medication management, including use of her C-PAP and nebulizer. (Exhibit 2, attachment 3)
4. On January 13, 2016, the Petitioner went to see her doctor. At that time, her diagnoses were allergic rhinitis, asthma, convulsions, degenerative joint disease of spine, esophagitis, hypothyroidism, leiomyoma, lumbrosacral neuritis, morbid obesity, obstructive sleep apnea, and post laminectomy syndrome. (Exhibit 3, pg. 79)
5. At the January 13, 2016 appointment, Petitioner's doctor noted that the Petitioner did not appear to be in acute distress and did not appear to have heavy breathing; that she had "no chest wall tenderness, labored breathing, wheezing..." In the clinical notes for that day, there was no mention of excessive sleepiness, no mention of any issues with Petitioner's pain management, and no mention of any adverse effects from medication. (Exhibit 3, pgs. 79-81)
6. On January 20, 2016, [REDACTED] Care completed a Personal Care Screening Tool (PCST) for Petitioner. The PCST indicated that the Petitioner lives with a family member and that she needs assistance as follows:
  - Bathing – Level D
  - Dressing Upper Body – Level D
  - Dressing Lower Body – Level D
  - Grooming – Level E
  - Eating – Level C
  - Mobility – Level C
  - Toileting – Level C, six times per day
  - Transferring – Level C
  - Medically Oriented Tasks – Medication reminder four times per day, C-PAP set up and cleaning, and assistance with albuterol nebulizer treatments.

(Exhibit 3, pgs. 61-68)
7. On February 9, 2016, [REDACTED] Care submitted, on behalf of the Petitioner, a prior authorization request, seeking to provide the Petitioner with 37 hours per week of personal care services for 53 weeks at a cost of \$34,515.72. (Exhibit 3, pg. 4)
8. The Prior Authorization/Care Plan Attachment that was submitted with the prior authorization request listed Petitioner's principal diagnoses as Lumbrosacral neuritis, shortness of breath, dizziness, obstructive sleep apnea, diverticulosis, neuropathy, morbid obesity. (Exhibit 3, pg. 70)
9. On February 23, 2016, DHS sent the Petitioner and [REDACTED] Care notices that it denied the [REDACTED] request to provide personal care services to Petitioner. (Exhibit 3, pgs. 50-55)
10. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals. (Exhibit 1)

## DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, “medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care.” *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under Wis. Admin. Code DHS §107.11(2), that are needed to treat a recipient’s medical condition or to maintain a recipient’s health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;

3. Is appropriate with regard to generally accepted standards of medical practice;
4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
6. Is not duplicative with respect to other services being provided to the recipient;
7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

██████████ Care, on behalf of Petitioner, requested 37 hours per week of active PCW service hours. According to the letter from the Department of Health Services, Office of the Inspector General, DHS denied the request.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, ██████████ Care, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located, under topic number 3165 on the Forward Health website:

<https://www.forwardhealth.wi.gov/WIPortal>

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), if any, are examined.

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*.

In the case at hand, DHS deemed the information in the PCST to be wholly incredible, because a LTCFS performed seven months earlier contradicted the information in the PCST. It is unclear why DHS determined the LTCFS to be more reliable than the PSCT, especially since the LTCFS was completed several months earlier and there are variables that can make either tool more or less reliable. However, Petitioner's testimony was much more consistent with the LTCFS, than it was with the PCST.

After taking the Petitioner's testimony, it is found that DHS was correct in its denial of ██████████ request to provide personal care services to Petitioner.

The Petitioner testified that she is able to bathe herself; that she uses a shower chair and can wash her own hair. The Petitioner did state that she has a difficult time, washing her back, due to shoulder pain, but a more cost-effective means of addressing that issue would likely be use of a long scrubbing towel or a long handled scrub brush, rather than paying personal care worker to assist with washing Petitioner's back.

The Petitioner testified that she is generally able to dress herself and that she has found ways to work around her limitations by wearing skirts, instead of pants. Petitioner's witness testified to seeing Petitioner put a coat on by herself.

Petitioner testified that she while is able to get her shoes on, she does need some help getting her socks on. Again, there are assistive devices to help with sock placement.

The Petitioner testified that she is able to wash her face and brush her own hair. The Petitioner testified that she has no teeth, and so does not need assistance with teeth brushing. Based upon the foregoing, it is found that the Petitioner does not need the assistance of a personal care worker (PCW) to complete the task of grooming.

The Petitioner testified that she is able to feed herself. So, there is no need for PCW assistance with this task.

The Petitioner confirmed that she is able to walk around her house safely. Petitioner's witness testified that Petitioner is able to walk around, but might need to rest. Accordingly, it is found that the Petitioner does not need PCW assistance with the task of mobility.

The Petitioner testified that she is able to go to the bathroom herself. As such, there is no need for PCW assistance with the task of toileting.

The Petitioner testified that she is able to get herself up from a chair or out of bed. Petitioner's witness has testified to seeing Petitioner complete this task. Accordingly, it is found that the Petitioner does not need PCW assistance with transfers.

With regard to medication assistance, the Petitioner was able to explain in her testimony what medications she took, in what dosages and when she needed to take them. None of the medical documentation supports a finding that the Petitioner has issues with her memory or cognition, such that she would need assistance with her medications. On the contrary at her doctor's appointments in the fall of 2015, Petitioner was noted to be alert and oriented without neurological issues. (See Exhibit 3, pgs. 84, 85, 87 and 90) As such, it is found that Petitioner does not need PCW assistance with medication administration.

With regard to use and maintenance of the C-PAP machine and nebulizer, it is unclear how Petitioner's various diagnoses would interfere with her ability to use this equipment independently. At the hearing, the Petitioner did not claim to need assistance with these devices. As such, it is found that the Petitioner does not need PCW assistance with her C-PAP and nebulizer.

Petitioner testified that she is sometimes in a lot of pain and needs assistance on those days, but Petitioner also testified that she is able to manage / take the edge off her pain with her medications. Petitioner then testified that her medications sometimes make her too sleepy to perform her activities of daily living independently. However, the medical records submitted by [REDACTED] do not indicate that Petitioner has suffered from excessive sleepiness from her medications. (See Exhibit 3, pgs. 76-94)

It is clear that Petitioner has a complex medical history and that completing her activities of daily living require more work for her than an otherwise healthy person, but based upon the LTFC which is corroborated by the testimony of Petitioner and her witness and based upon the medical records submitted by [REDACTED], it is found that there is insufficient evidence, at this time, to support a finding that the Petitioner requires PCW assistance with her activities of daily living.

Petitioner should note that if she has medical documentation that better explains her limitations, that [REDACTED] Care can, at any time, submit a new request for prior authorization with that documentation.

### **CONCLUSIONS OF LAW**

DHS correctly denied [REDACTED] request for authorization to provide personal care services to the Petitioner.

**THEREFORE, it is**

### **ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

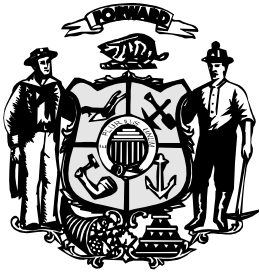
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 26th day of May, 2016

---

\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on May 26, 2016.

Division of Health Care Access and Accountability